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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. ERIC PAUL MILLER, Defendant and Appellant.	2d Crim. No. B214342 (Super. Ct. No. GA070322) (Los Angeles County)

Eric Paul Miller appeals his conviction by jury of four robberies and one kidnapping to commit another crime (robbery). (Pen. Code, §§ 211, 209, subd. (b)(1).)[1] The jury acquitted him of attempted theft from an elder or dependent adult, and unlawfully driving or taking a vehicle. (§§ 368, subd. (d)/664; Veh. Code, § 10851, subd. (a).) After finding that the prior serious felony, prior strike conviction, and prior prison term allegations were true, the court sentenced appellant to state prison for 10 years, plus 19 years to life. (§§ 667, subds. (a)(1), (b)-(i), 1107.12, subds. (a)-(d) & 667.5, subd. (b)). Appellant challenges the sufficiency of the evidence and contends that the trial court abused its discretion when it denied his motion to strike his prior serious felony conviction pursuant to *People v. Superior Court* (*Romero*) (1996) 13 Cal.4th 497 (*Romero*). We affirm.

[1] All statutory references are to the Penal Code unless otherwise stated.

FACTUAL AND PROCEDURAL BACKGROUND

Robbery of Hazel B.

On November 27, 2006, just before 9:00 a.m., 83-year-old Hazel B. was driving on Huntington Boulevard in Duarte when she heard someone honking and yelling at her to pull her car over and stop. Her car has a handicapped placard. She pulled over and the same man, who she identified as appellant, came to her car window, told her to grab her purse, and said that her car would blow up at any time. She could not see anything but got out of her car. He took her to his car and said to get in the backseat, as he held her elbow. He shut the car door and told her to give him her car keys so he could check her car. She handed him her keys and he moved her car. It was drizzling rain and she just "went along with it."

Appellant said that the woman in the back seat was his wife, and that she was with the Monrovia Police Department. He said they had been driving to the shooting range until he decided to help Hazel. He also said he had his own shop and that her car needed to be towed for repairs. Hazel said that the "AAA" could tow it but appellant insisted on making the towing arrangements. When he said that he would need money "up front," Hazel pulled a $20 bill from her purse. Appellant drove to a Bank of America. He put his hands on Hazel and left them there as they walked in the parking lot and around the bank. He told the people standing in line inside the bank that his "elderly sick aunt" needed to get to the front to complete a transaction quickly, and he took Hazel to the front of the line. When they reached the counter, he said he would need $3,200. He put the check on the counter and requested large bills. He took the money from the teller who cashed the check. When they reached his car, he handed the money to the woman in the back seat.

Hazel was afraid of appellant. He had her car key. She felt very sick and nervous. She thought she should just go along. She did not know what might happen to her car. She needed the car to take her granddaughter to school and to help her elderly mother. She did not know what appellant had in his pocket. She

understood that he had been driving to the shooting range and she had no idea if he or his wife had a gun. She feared appellant and worried about her safety.

Appellant drove back to Hazel's car after they left the bank. He left his car, entered Hazel's car, backed it up about a foot, and said, "It's all taken care of." It was only about 15 minutes after they had left her car to go to the bank. There was no sign that someone had repaired the car, nor any tow truck. Appellant handed Hazel the keys, told her to drive carefully, and said they would follow her. Because she did not want them to follow her, Hazel decided against driving to her sister's house as she had planned. Appellant told Hazel that he would reimburse her with a cashier's check but she never received it.

Kidnapping and Robbery of Herta B.

In December 2006, 81-year-old Herta B. was in the City of Hope Hospital in Duarte, during a stay that included treatment in the intensive care unit. Nine days after her discharge, on December 21, 2006, at approximately 1:30 p.m., she was driving to a doctor's appointment at that hospital.

A car cut Herta off as she approached the hospital, and forced her to stop. Appellant jumped out of his car and said, "Lady, lady, get out. . . . You're going to get blown up. Your car is on fire. Get out. You're going to be blown up. . . . Get out." She unlocked her car. Appellant pulled Herta from her car, and insisted that it was on fire. She said she did not see any fire. He insisted that there were sparks and that her car need to be repaired. Holding her arm, appellant told Herta to get into his car. His wife moved to the back seat. Appellant put Herta in the front seat. She did not want to get in his car but she was afraid. Appellant was a stranger who was much bigger than her. Herta begged him to let her go to her doctor's appointment but he would not let her go. He acted as if he thought he was a good Samaritan.

Appellant claimed to own two Mobil stations and said his employees would fix her car while she stayed with him. Herta worried that appellant might harm her and she worried about her car. She thought if she tried to leave the car,

appellant's wife would hold onto her. Appellant drove Herta's car around the block, parked it, and returned to his car. Herta was "scared senseless." Appellant said that his mechanics would fix her car. Herta shook with fear and did not feel she could leave his car.

Appellant asked for the name of Herta's mechanic. When she said it was Rick Montenegro, he claimed that Rick was his cousin. He handed Herta a cell phone and said that Rick was on the phone. A man on the phone told Herta that appellant would take care of her and she should not worry.

Appellant told Herta that the car repairs would require special equipment and that a new law required her to make a down payment. He initially said that he would need $1,500, then said he would need $2,000, in cash. Because she never used automated teller machines, Herta rejected his suggestion that she withdraw money from an ATM. Appellant asked where she banked and said he would take her to a bank. She did not want to go but felt that she had no other option while surrounded by appellant and his wife. He drove to a Bank of the West in El Monte. On the way there, Herta was shaking. Appellant made several stops and talked about looking for a windshield and tires. He grabbed Herta's arm when they reached the bank, and kept it there most of the time. He said he would call her "Mom" so that the employees would not be suspicious.

Herta asked the bank teller for $2,000. Appellant said something like, "make it 2500." When the teller handed the money to Herta, appellant grabbed it and put it in his pocket. Still holding Herta's arm, he put her in the car. Suddenly, appellant drove very fast. He did not want Herta to take time to put on her seatbelt. She insisted on doing that. When she said that her grandson was waiting at home for her, appellant drove back to her car "like crazy." That scared her.

When they reached Herta's car, appellant said that it was "all fixed." He told her she should meet him at a nearby Mobil station, where he would return her money. She went there but could not find appellant or anyone who knew anything about him. Altogether, she spent about two and a half hours with

appellant. She later learned that Rick had nothing to do with the robbery and that there was nothing wrong with her car.

Robbery of June K.

On July 10, 2007, at approximately 8:30 a.m., 78-year-old June K. was driving her 2007 Honda on Rosemead Boulevard in Temple City or San Gabriel. She noticed the driver of a white car to her right who was honking. The driver, later identified as appellant, said, "Don't you hear all the people honking at you? Your car is on fire." Appellant told her to pull over on a nearby side street. He approached the window of June's car and said that her car was on fire and had a broken axle. He told her he owned nearby gas stations and that he would have her car towed and repaired. He also said he was a Christian and that he would not be driving his expensive car if he were going to do something illegal.

After June entered appellant's car, he said he would make arrangements to buy a new axle and could get her a discount. He said it would cost about $1,200 and that he would need cash. She worried that she was being conned and was also frightened. They went to her home to get her identification and bank card. At appellant's suggestion, they went to her bank in Pasadena.

Appellant accompanied June into the bank while she withdrew $1,200. The teller put it in an envelope. June left the bank with the money. She was frightened and felt she should do something but she was afraid that appellant might harm her. He drove her to an empty lot in Pasadena with lots of cars, in a residential neighborhood. He said that her car was being repaired there. He asked her for the money. She handed him the money, and he left her at the car lot and drove away. Her car was not there.

A Temple City Police Officer went to the car lot to interview June. She later learned that there was nothing wrong with her car, except that it had black spray paint around its back fender. During the incident, her biggest worry was that her car would be stolen but she was also afraid. Although appellant neither used

words to threaten her nor any force on her, she was afraid of him. She handed appellant the money because she thought he would harm her.

Robbery of Keeko I.

On June 26, 2007, at approximately 4:15 p.m., Keeko I. was in the Wells Fargo Bank on Lake Avenue in Pasadena. She saw a tall white man at a teller's window who had tattoos all over his arm. Keeko withdrew approximately $900, and put it in her purse. She went to her car and put her purse in the trunk.

Keeko drove from the bank's parking lot onto Green Street, then turned onto nearby Mentor Avenue. A man driving a white car in the adjacent lane pointed at the back of her car and said there was something wrong with it. He passed Keeko and stopped in front of her car, which forced her to stop. He approached her car, opened its trunk, and started to take her money. When Keeko tried to close the trunk, the man said that he would kill her. She got very frightened and he left with her money. The license plate number on the man's white car started with "5G."

On June 26, 2007, Angele Sahakian was working as a teller at the Wells Fargo Bank on Lake Avenue and Green Street in Pasadena. Sahakian identified appellant as the person with tattoos "all over his arms" who was in the bank in the afternoon on June 26, 2007. Appellant presented a check that Sahakian cashed at 4:25 p.m., after taking his thumbprint and viewing his driver's license. Photographs from the bank's security camera show that appellant was in the bank on June 26. Sometime after appellant left, Keeko came into the bank and screamed that she had been robbed.

On July 12, 2007, a Pasadena police officer searched appellant's residence. He found a white car there. The first two characters on its license plate are "5G."

DISCUSSION

Appellant claims that there is insufficient evidence to support his convictions. In reviewing such a claim, we view the evidence most favorably to the

prosecution and presume in support of the judgment the existence of every fact the trier of fact could reasonably deduce from the evidence. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206; *People v. Johnson* (1980) 26 Cal.3d 557, 576-578.) The test is whether, after considering the evidence most favorably to the prosecution, any rational trier of fact could have found the elements of the crime to be true beyond a reasonable doubt. (*Jackson v. Virginia* (1979) 443 U.S. 307, 319; *Johnson*, *supra*, at pp. 576- 578.)

The uncorroborated testimony of a single witness is sufficient to sustain a conviction, unless the testimony is physically impossible or inherently improbable. (*People v. Scott* (1978) 21 Cal.3d 284, 296.) "The testimony of a single witness is sufficient to uphold a judgment even if it is contradicted by other evidence, inconsistent or false as to other portions. [Citations & fn. omitted.]" (*In re Frederick G.* (1979) 96 Cal.App.3d 353, 366.)

Appellant challenges the sufficiency of the evidence to support his robbery convictions. "'Robbery [(§ 211)] is the taking of "personal property in the possession of another against the will and from the person or immediate presence of that person accomplished by means of force or fear and with the specific intent permanently to deprive such person of such property."' [Citations.]" (*People v. Davis* (2009) 46 Cal.4th 539, 608.)

In challenging his conviction of robbing Keeko, appellant contends that "there was insufficient evidence identifying him as the individual who robbed [her]." We disagree.

While Keeko did not identify appellant as her robber, substantial evidence supports the inference that appellant is the person who robbed her on June 26, 2007. Just before the robbery, she withdrew about $900, in cash, at the same bank where appellant was cashing a check at about the same time. Like the robber, appellant is tall. Keeko was robbed right after leaving the bank, by someone driving on a street near the bank. Not long after appellant left the bank, Keeko returned to the bank and screamed that she had been robbed. Police found a car at

appellant's residence that fit Keeko's description of the robber's car. In addition, her description of the methods the robber used to isolate her before the robbery--interrupting her as she drove alone, telling her there was something wrong with her car, and driving in a manner that forced her to stop her car--matches the other robbery victims' descriptions of methods appellant used to isolate them.

In challenging his convictions of robbing Hazel, June and Herta, appellant argues that there is insufficient evidence that he took their money against their will and used force or fear in doing so. We reject this argument, also.

Appellant argues that he was a con man or a scam artist who "used his silver tongue" to put the victims at ease so that they "would willingly give him their money." The jury rejected the same argument. """The element of fear for purposes of robbery is satisfied when there is sufficient fear to cause the victim to comply with the unlawful demand for [her] property.'" [Citation.]" (*People v. Bordelon* (2008) 162 Cal.App.4th 1311, 1319.) The victim's fear is measured subjectively. (*Ibid*.)

In this case, measuring subjectively, the evidence establishes that the victims were afraid and their fear caused them to withdraw their money and hand it to appellant or passively watch him take it away. Hazel recalled shaking as appellant drove to the bank in El Monte. She knew that appellant and his wife were driving to a shooting range when they encountered her. She did not know what he had in his pocket or whether he and his wife had guns with them. Herta did not want to go with appellant but felt that she had no other option while surrounded by appellant and his wife. She was "shaky" before they reached the bank. He grabbed her arm to take her into the bank. She was afraid and did not feel that she was free to leave or to refuse to give appellant her money. June gave appellant the money because she thought that he would harm her.

We also reject appellant's contention that his conviction of kidnapping Herta with the intent to commit robbery lacks sufficient evidence that he acted with the intent to commit robbery, and that he took, held or detained her by force or

instilling fear. Appellant's challenge to the kidnapping for robbery conviction, like his challenge to three of the robbery convictions, is premised on his claim that there is no evidence that he used the requisite force or instilled the requisite fear.[2] The record belies his claim. Herta wanted to keep her doctor's appointment and begged appellant to let her do so. She did not want to go with appellant but felt that she had "no choice" while surrounded by him and his wife. She shook and felt like "chop[ed] liver." He grabbed her arm to take her into the bank and held her arm the entire time they were in there. She was afraid and did not feel that she was free to leave or to refuse to give appellant her money.

We also reject appellant's claim that the court abused its discretion in denying his *Romero* motion. A trial court has the discretion to strike a prior serious felony conviction for purposes of sentencing only if the defendant falls outside the spirit of the three strikes law. (§ 1385; *People v. Williams* (1998) 17 Cal.4th 148, 161; *Romero, supra*, 13 Cal.4th at pp. 529-530.) In deciding whether to exercise its discretion in this regard, the court "must consider whether, in light of the nature and circumstances of his present felonies and prior serious and/or violent felony convictions, and the particulars of his background, character, and prospects, the defendant may be deemed outside the scheme's spirit, in whole or in part, and hence should be treated as though he had not previously been convicted of one or more serious and/or violent felonies." (*Williams*, *supra*, at p. 161.)

"[A] trial court will only abuse its discretion in failing to strike a prior felony conviction allegation in limited circumstances. For example, an abuse of discretion occurs where the trial court was not 'aware of its discretion' to dismiss [citation], or where the court considered impermissible factors in declining to dismiss [citation] . . . ." (*People v. Carmony* (2004) 33 Cal.4th 367, 378.)

In reviewing for abuse of discretion, we are "guided by two fundamental precepts. First, '"[t]he burden is on the party attacking the sentence to

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[2] In his reply brief, appellant states that he "is not disputing the movement" in challenging his conviction of kidnapping to commit robbery.

clearly show that the sentencing decision was irrational or arbitrary. [Citation.] In the absence of such a showing, the trial court is presumed to have acted to achieve the legitimate sentencing objectives, and its discretionary determination to impose a particular sentence will not be set aside on review.'" [Citations.] Second, '"a decision will not be reversed merely because reasonable people might disagree. 'An appellate tribunal is neither authorized nor warranted in substituting its judgment for the judgment of the trial judge.'" [Citations.] Taken together, these precepts establish that a trial court does not abuse its discretion unless its decision is so irrational or arbitrary that no reasonable person could agree with it." (*People v. Carmony*, *supra*, 34 Cal.4th at pp. 376-377.) Thus, only in "an extraordinary case where the relevant factors described in *Williams* . . . manifestly support the striking of a prior conviction and no reasonable minds could differ-[would] the failure to strike [be] . . . an abuse of discretion." (*Id*. at p. 378.)

Appellant claims that the court abused its discretion in denying his *Romero* motion because the "court merely comment[ed] that it would not exercise its discretion to strike the prior" and that "striking a prior was never considered." The record indicates otherwise. On December 11, 2008, appellant submitted an eight-page written *Romero* motion urging the court to dismiss his prior strike on multiple grounds, including the non-violent nature of "most of his past convictions," his demonstrated willingness and ability to rehabilitate himself, and the age of his strike conviction (18 years). On February 20, 2009, before announcing its ruling, the court stated, "I did consider the *Romero* motion."

The facts and circumstances of appellant's case do not compel the conclusion that he should be treated as if he were not a recidivist. In 1989, he was sentenced to state prison for three years and released on parole in July 1991. He was arrested within a year, in January 1992, convicted of grand theft, and again sentenced to state prison. In November 1993, he was arrested for inflicting corporal injury on a spouse or cohabitant. He pled guilty to battery, and the court placed him on probation. In 1994 and 1995, he was convicted of Vehicle Code violations, and

placed on probation on each occasion. In 1996, he was convicted of theft and placed on probation for 12 months. During that probationary period, he drove with a suspended license and committed a petty theft with a prior. In August 2002, appellant was sentenced to a four-year prison sentence for a drug offense. The record indicates that he has "done poorly in the past under parole supervision." The court did not abuse its discretion in denying his *Romero* motion.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

GILBERT, P.J.

PERREN, J.

Leslie E. Brown, Judge

Superior Court County of Los Angeles

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